

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 21518WO	FOR FURTHER ACTION	
	See Form PCT/IPEA/416	
International application No. PCT/NL2004/000411	International filing date (day/month/year) 10.06.2004	Priority date (day/month/year) 18.06.2003
International Patent Classification (IPC) or national classification and IPC C09D167/00		
Applicant DSM IP ASSETS B.V. et al.		
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <ul style="list-style-type: none"> a. <input type="checkbox"/> <i>(sent to the applicant and to the International Bureau) a total of sheets, as follows:</i> <ul style="list-style-type: none"> <input type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions). <input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box. b. <input type="checkbox"/> <i>(sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</i> 		
<p>4. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the opinion <input type="checkbox"/> Box No. II Priority <input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input checked="" type="checkbox"/> Box No. VII Certain defects in the international application <input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application 		
Date of submission of the demand 25.01.2005	Date of completion of this report 08.03.2005	
Name and mailing address of the International preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Glomm, B Telephone No. +49 89 2399-7158	



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Box No. I Basis of the report

1. With regard to the language, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.

- This report is based on translations from the original language into the following language, which is the language of a translation furnished for the purposes of:
- international search (under Rules 12.3 and 23.1(b))
 - publication of the international application (under Rule 12.4)
 - international preliminary examination (under Rules 55.2 and/or 55.3)

2. With regard to the elements* of the international application, this report is based on (replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report):

Description, Pages

1-12 as originally filed

Claims, Numbers

1-11 as originally filed

- a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. The amendments have resulted in the cancellation of:

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (specify):
- any table(s) related to sequence listing (specify):

4. This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).

- the description, pages
- the claims, Nos.
- the drawings, sheets/figs
- the sequence listing (specify):
- any table(s) related to sequence listing (specify):

* If item 4 applies, some or all of these sheets may be marked "superseded."

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Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	
	No:	Claims	1-11
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-11
Industrial applicability (IA)	Yes:	Claims	1-11
	No:	Claims	

2. Citations and explanations (Rule 70.7):

see separate sheet

Box No. VII Certain defects in the international application

The following defects in the form or contents of the international application have been noted:

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

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Cited documents:

- D1: EP-A-1 081 176 (DSM NV) 7 March 2001 (2001-03-07)
- D2: EP-A-0 582 363 (ROHM & HAAS) 9 February 1994 (1994-02-09)
- D3: EP-A-0 419 003 (PPG INDUSTRIES INC) 27 March 1991 (1991-03-27)
- D4: EP-A-0 322 827 (PPG INDUSTRIES INC) 5 July 1989 (1989-07-05)
- D5: EP-A-0 322 807 (PPG INDUSTRIES INC) 5 July 1989 (1989-07-05)
- D6: US 2002/091203 A1 (LOONTJENS JACOBUS A ET AL) 11 July 2002
(2002-07-11)

1. Novelty (Art. 33 (2) PCT)

Each of cited documents D1 to D6 discloses a powder paint composition comprising at least (a) a thermosetting polymer, (b) a compound comprising β -hydroxyalkylamide units, and (c) a deceleration agent, capable of reversibly blocking the functional groups of said polymer (a) as specified in detail in present independent main claim 1 (for relevant passages, see the corresponding International Search Report).

The attention of the applicant is drawn especially to the fact, that the parameters as specified in present independent main claim 1 in lines 2/3, on the one hand, and in lines 7/8, on the other hand, respectively, appear to be implicitly disclosed by each of said documents D1 to D6 in view of the principles of the established official practice. Implicit disclosure corresponds to the fact, that the claimed product is regarded as being anticipated actually by said prior art documents, even if the claimed parameters as specified in the above-mentioned passages

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of present main claim 1 are not expressly mentioned therein, i.e., the parameters are regarded as being actually present in the prior art embodiments, but simply not determined and/or mentioned expressly.

The considerations as provided in applicant's letter dated 25.01.2005 are not convincing in this respect. The person skilled in the art must be enabled to carry out the teaching of the invention on the basis of the knowledge of its essential elements and without any undue burden.

Consequently, each of said documents D1 to D6 anticipates the subject matter of present claim 1.

The same considerations also relate to the additional features of the following claims 2 to 11 when taking into account the full disclosure of each of said documents D1 to D6.

Therefore the subject matter of present application is not new in view of the disclosure of each of said documents D1 to D6.

2. Inventive Step (Art. 33 (3) PCT)

Providing an amended main claim which meets the requirements of Art. 33 (2) PCT, the applicant should relate the distinguishing feature to a surprising (unexpected) technical effect or make credible or plausible that the distinguishing feature is not derivable from the prior art teaching (Art. 33 (3) PCT).

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3. Miscellaneous

The obscure parameters as specified in lines 2/3, on the one hand, and lines 7/8, on the other hand, of present main claim 1, respectively, appear to attempt a definition of the subject matter to be protected by means of the corresponding results to be achieved, rather than by means of clear and unambiguous technical features, such violating the Art. 6 PCT. The applicant therefore is invited to replace said objected terms by clear and unambiguous technical features based on suitable subclaims or relevant passages taken from the present description.

In order to improve the understanding and legibility of the application, the documents D1 to D6 should be identified in the description additionally and the relevant background art disclosed therein should be briefly discussed.

When filing amendments, any undue extension of the scope of the application should be avoided.